

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

STEPHANIE SCHOLL and FRANK ) Case No. 24 C 4435  
BEDNARZ, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ILLINOIS STATE POLICE, et )  
al., ) Chicago, Illinois  
 ) December 12, 2024  
Defendants. ) 1:06 p.m.

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE MARTHA M. PACOLD

APPEARANCES:

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PROCEEDINGS REPORTED BY STENOTYPE  
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1 (Proceedings heard in open court:)

2 (Call to order.)

3 THE CLERK: 24 C 4435, Scholl v. Illinois State  
4 Police. Everyone else can be seated, and plaintiff can state  
5 your name.

6 Plaintiff can state your name, start with plaintiff.

7 Who's plaintiff?

8 MR. STEPHENS: Oh, Reilly Stephens for the plaintiff,  
9 Your Honor.

10 THE CLERK: And defendants?

11 MS. JOHNSTON: Assistant Attorney General Mary  
12 Johnston on behalf of defendants.

13 THE COURT: Good afternoon, everyone.

14 We're here for the argument on the pending motions.  
15 There's a motion by the plaintiffs for a preliminary  
16 injunction, and then there's a motion to dismiss by the  
17 defense.

18 Are the parties ready to proceed with the argument?

19 MS. JOHNSTON: Yes.

20 MR. STEPHENS: Yes.

21 MS. JOHNSTON: Yes, Your Honor, we can step up.

22 THE COURT: Okay.

23 Well, okay, so let's just talk quickly about what's  
24 going to be the order. Did you have a chance to discuss that  
25 at all?

1 MR. STEPHENS: We have not talked about that, I don't  
2 think.

3 MS. JOHNSTON: We have not. I would suggest possibly  
4 proceeding in the same order of the briefing. So we could have  
5 plaintiff --

6 MR. STEPHENS: That's me then.

7 MS. JOHNSTON: Yeah, plaintiff opening, then  
8 defendants, back to plaintiff, and then ending with defendants  
9 again, sort of mimicking what it is that was filed.

10 MR. STEPHENS: That's fine with me if it's fine with  
11 you, Your Honor.

12 THE COURT: Okay. That sounds good. I think that  
13 makes sense just to track the order of the briefs.

14 And I believe I set a 30-minute time limit. I mean,  
15 if you think you need more time than that, you know, I would  
16 understand, but I mean just approximately that would be good.

17 MS. JOHNSTON: Should I step up?

18 THE COURT: Okay. Whenever you're ready.

19 Actually, also, I think since it could be up to  
20 30 minutes or around there, if you'd like to stay seated while  
21 the other side is arguing.

22 MR. STEPHENS: I'm not going to take 30 minutes unless  
23 Your Honor has questions.

24 THE COURT: Okay.

25 MR. STEPHENS: I don't think I have 30 minutes of

1 extemporaneous things to say, so it's up to Your Honor.

2 MS. JOHNSTON: I also think it's unlikely. I'll step  
3 up, but thank you, Your Honor, I appreciate that.

4 THE COURT: All right.

5 MR. STEPHENS: All right. Everybody ready?

6 THE COURT: Yes, whenever you're ready.

7 MR. STEPHENS: Okay. May it please the Court, Reilly  
8 Stephens on behalf of the plaintiffs.

9 Your Honor, the defendants are tracking every citizen  
10 without probable cause, without reasonable suspicion, without  
11 even unreasonable suspicion, without any suspicion at all.  
12 Rather, they treat every citizen as the proper subject of  
13 surveillance only to decide later who to check up on.

14 In defense of this, they fall back on essentially  
15 20th century case law about beepers and pagers and pay phones,  
16 but as the past decade-plus of Supreme Court precedence has  
17 shown and explained, modern technology is different because the  
18 marginal costs of surveillance have been so thoroughly reduced,  
19 which is why cases like *Jones* and *Riley* and ultimately most  
20 importantly *Carpenter* found that the aggregation of data  
21 allowed by modern technology makes things different in kind,  
22 not simply different in quantity, right?

23 And that reduction in marginal cost means that what  
24 used to require the police to put a tail on somebody, to put a  
25 body on somebody, to actually put resources in, now they can

1 sit passively and let the computer collect all the data on all  
2 of us and decide later who to target and, again, without a  
3 warrant, without any kind of probable cause, without any kind  
4 of court review, without any kind of magistrate, without any  
5 kind of committee, as far as I'm aware, or any kind of  
6 oversight. The police simply can look at and figure out where  
7 you're going, where anybody is going based on their claim of a  
8 legitimate law enforcement purpose.

9 And we simply submit that the Fourth Amendment  
10 requires more. We think at the minimum, they shouldn't be  
11 allowed to collect and store data on everybody, but at minimum  
12 they should have to get a warrant, when -- go through some sort  
13 of process in order to surveil us all in this manner.

14 In many ways, this is, in fact, worse than *Carpenter*  
15 because in *Carpenter*, the government had to get a subpoena, had  
16 to go to Verizon with a subpoena and get it from the phone  
17 company. Here, the government just has the data. They don't  
18 need a subpoena. They don't need any kind of process.

19 A subpoena, the company can actually challenge and say  
20 we don't think that our customers should be -- have their data  
21 turned over. There's no such check in here. It's simply up to  
22 the discretion and good faith of the police officers, and while  
23 most police officers we may trust, we certainly understand that  
24 we have the Fourth Amendment, we have warrant requirements  
25 because we understand that there needs to be oversight.

1           As the Fourth Circuit explained in the *Leaders of a*  
2 *Beautiful Struggle* case --

3           THE COURT REPORTER: Leaders of --

4           MR. STEPHENS: Leaders of a Beautiful Struggle, it's  
5 like a nonprofit that was the party in that case.

6           THE COURT REPORTER: I just didn't understand you.

7           MR. STEPHENS: I'm sorry. *Leaders of a Beautiful*  
8 *Struggle v. City of Baltimore*, I believe it is, or Baltimore  
9 Police maybe.

10           That, you know, this kind of collection is where  
11 everyone's driving at every point, it is different in kind than  
12 an individual data point or an individual moment. It is rather  
13 that it shows -- it reveals that the habits of our lives, what  
14 we do repeatedly, where we go, and where we don't go, and it  
15 paints a picture of how we live that isn't painted by a single  
16 camera outside of a single public space, as in the Seventh  
17 Circuit case in *Tuggle*.

18           Illinois knows that this is a problem. They  
19 understand this on some level because they actually passed this  
20 past year a limitation specifically that this data will not be  
21 shared with other states for purposes of abortion and  
22 immigration enforcement. Those things that they realize this  
23 data is dangerous for, we submit this data is dangerous in a  
24 lot of other ways, and we submit that because of that, there  
25 should be a process and there should be a limitation on the

1 government's ability to track every citizen wherever they go  
2 for all purposes.

3 I don't want to just reiterate the rest of what's in  
4 the brief. I think Your Honor can read that for yourself. I  
5 think -- I would just say there's a few points.

6 Their standing argument I think pretty much is a  
7 merits argument, so I don't know what to say about that other  
8 than that, you know, this is a search, and we can talk about  
9 that, I would talk about it more in the context of the Fourth  
10 Amendment analysis of this is a search because there's a  
11 reasonable expectation of privacy which *Carpenter* establishes  
12 in public movements.

13 On their sovereign immunity thing, the first thing to  
14 say is that it's kind of academic because they didn't even  
15 raise sovereign immunity as to Director Kelly, and so this case  
16 cannot be dismissed on those grounds even if you disagree with  
17 me that I think the Governor and the Attorney General are  
18 rightfully in this case and can rightfully be enjoined under *ex*  
19 *parte Young* for the behavior of their subordinates and the  
20 programs that they oversee.

21 And, again, the Seventh Circuit has made clear that it  
22 is perfectly acceptable for this Court to issue, really I think  
23 it was broader than just the two plaintiffs in this case in a  
24 situation like this, and we think this situation fits that  
25 criteria.

1           But just I guess the last thing is specifically on the  
2 Governor, I do think he stays in the case because I do think  
3 that as the Seventh Circuit explained in *Holcomb*, you know,  
4 his -- that place was simply pled incorrectly. It was pled as  
5 an injunction against the Governor to do something rather than  
6 an injunction of the Governor as the head of the Bureau of  
7 Motor Vehicles of Indiana, right, and so that I think  
8 distinguishes that.

9           And that was kind of my affirmative presentation, Your  
10 Honor. I don't know if you had any questions.

11           THE COURT: I do have a few questions. I guess I'm  
12 trying to think through whether to ask these now or wait until  
13 both of you have made your presentations and then ask them --

14           MR. STEPHENS: At the Court's preference.

15           THE COURT: -- of both sides.

16           Okay. Maybe I'll do that. So we'll go next to the  
17 defense, and then because it's possible that some of the  
18 questions get answered as you both are completing the rest of  
19 the arguments and maybe I just ask at the end.

20           MR. STEPHENS: Okay.

21           THE COURT: Okay.

22           MS. JOHNSTON: Understood.

23           Thank you, Your Honor. Again, Mary Johnston on behalf  
24 of the defendants.

25           So I'm going to change the order a little bit in which



1 I address these points, and I'm just going to start off with  
2 the Eleventh Amendment argument. Plaintiff is correct that  
3 defendants did not raise an Eleventh Amendment argument as to  
4 Director Kelly, and that's because we agree that -- well,  
5 obviously there's disagreement about the merits of the  
6 underlying claim. We agree that if it does move forward,  
7 Director Kelly is the appropriate defendant.

8 Plaintiffs' response or reply, if you will, does seem  
9 to concede that the Illinois State Police as an entity is not  
10 an appropriate defendant because it's not a person for purposes  
11 of Section 1983 litigation, so we would ask that the Illinois  
12 State Police certainly be dismissed.

13 Plaintiffs' argument as to Governor Pritzker is also  
14 misplaced. As explained in the briefing and just now, that  
15 argument really relies on the idea that Governor Pritzker is  
16 directly involved in the operation of the Tamara Clayton  
17 Expressway Act, or the relevant act at issue here, simply  
18 because of his role as Governor of the State of Illinois and  
19 because he appointed Director Kelly, and this somehow gives him  
20 some specific involvement here.

21 But that actually stands really in contrast to the  
22 ruling of *ex parte Young* because if this rationale were  
23 accepted, it would mean that the Governor would be a proper  
24 defendant any time any statute was challenged simply by virtue  
25 of being the Governor, and the case law is clear that there

1 does need to be more than him fulfilling the basic obligations  
2 of his role in order to get around the Eleventh Amendment.

3 So because there is no special relationship between  
4 the Governor and his actions and the Act, the Eleventh  
5 Amendment does bar those claims.

6 Turning finally then to Attorney General Raoul, those  
7 claims are also barred by the Eleventh Amendment. I don't  
8 believe that this was addressed in argument right now, but the  
9 Attorney General has the ability to use data that's pulled from  
10 ALPRs to prosecute crimes.

11 There's no other involvement with the Act. If the  
12 Act -- you know, if the data wasn't available, he would still  
13 be able to prosecute those crimes in other manners, and  
14 because, again, there isn't just special relationship between  
15 Attorney General Raoul and the Act, those claims are also  
16 barred by the Eleventh Amendment.

17 So we'd like to reiterate that the Illinois State  
18 Police, Governor Pritzker, and Attorney General Raoul should be  
19 dismissed as defendants with the only remaining defendant being  
20 defendant Director Kelly should the claims move forward.

21 Then moving on to more of the merits of plaintiffs'  
22 claims, which we agree actually really kind of encompass  
23 standing as well. As a preliminary point, it is plaintiffs'  
24 burden to establish that they have standing to bring their  
25 claims, and here that allegation relates solely to whether or

1 not the use of ALPRs themselves has created any sort of  
2 cognizable injury.

3           Plaintiffs admit that they have not had ALPR data used  
4 against them. They admit that there's no real reason to  
5 believe that it will be used against them in the future. As  
6 such, the entire theory of the case rests on whether the use of  
7 ALPRs in general is constitutional. And because that's the  
8 argument, this is a situation where standing and the merits  
9 can't really be unraveled because the success of plaintiffs'  
10 claim or, as we assert here, the failure of plaintiffs' claim  
11 kind of rises and falls with the Fourth Amendment analysis,  
12 meaning that if this case -- if this Court finds that there's  
13 no Fourth Amendment violation, then there's also no standing.

14           Either way, defendants do note that this is  
15 plaintiffs' burden, and it's notable that they have not cited  
16 to any sort of case law or applicable comparison to support  
17 their theory of why the use of ALPRs in and of themselves is a  
18 cognizable injury.

19           Instead, you know, we have some inapplicable  
20 hypotheticals in the response/reply, which is -- let me just  
21 clarify that is -- I think that's ECF number -- I apologize,  
22 Your Honor. I just wanted to clarify which one. ECF No. 28.

23           You know, they make reference to how, if the State of  
24 Illinois installed cameras in the master bedroom of every home,  
25 they would be able to challenge that even though that data

1     hadn't been used against them in any way.

2             But the comparison first of all, specifically ignores  
3     the fact that the Fourth Amendment extends directly to an  
4     individual's privacy in their home, and this analogy really  
5     kind of highlights how thin the argument is, and the obvious  
6     difference between activities that take place in our homes and  
7     the activities that take place in our vehicles on public roads.

8             All in all, it amounts to little more than kind of a  
9     general and ideological disagreement with state action, which  
10    is not in and of itself a constitutional violation. There  
11    needs to be more.

12            And so turning then to the kind of substance of the  
13    Fourth Amendment claim, that fails as well. I want to very,  
14    very briefly just direct the Court to two points regarding the  
15    Fourth Amendment claims before moving into more of the meat of  
16    it.

17            The first relates to plaintiffs' facial challenge.  
18    This is described in depth in the briefing, but generally  
19    speaking, in order for a facial challenge to succeed, the  
20    plaintiff has to show that there is no situation in which it  
21    can be constitutional.

22            Here, that simply isn't the case. Plaintiffs' own  
23    example about, you know, being able to use ALPRs to locate a  
24    missing person or a kidnapped individual shows why it is that  
25    there are constitutional uses to this. I mean, that could be

1 looking at historical data that goes back, you know, hours,  
2 days, weeks, to assist law enforcement for constitutional  
3 purposes.

4 And then it's also important to clarify exactly what  
5 conduct is challenged here. Plaintiffs' complaint and  
6 allegations relate to the Tamara Clayton Expressway Act as  
7 operated by the Illinois State Police. Now, plaintiffs'  
8 response or reply makes some statements about information from  
9 other towns or municipalities. That's not what's at issue  
10 here.

11 This lawsuit is limited to the use of the ALPRs as  
12 designated by the Act which are located on certain highways and  
13 expressways throughout the state. There can't be general  
14 statements about what type of data would be available from  
15 other cameras that might exist. Any of those allegations  
16 shouldn't be able to be used to kind of bolster plaintiffs'  
17 argument to go on a fishing expedition.

18 Then moving on to the substance of the Fourth  
19 Amendment claim and the as-applied challenge, the main question  
20 is whether or not a person has a reasonable expectation of  
21 privacy in the information that they voluntarily display in  
22 public. So that could be the license plate number or their  
23 location on public roads, and the case law is clear that this  
24 is simply not the case.

25 You know, it is true that there have been advances in

1 technology and that physical trespass isn't always required for  
2 there to be a Fourth Amendment violation, but in these  
3 situations, the Supreme Court has made it abundantly clear that  
4 when evaluating situations like that, you look to the two-part  
5 analysis from *Katz*, and so that acts if there's a subjective  
6 expectation of privacy and then it looks at whether or not the  
7 government infringed on an expectation of privacy that society  
8 considers reasonable.

9 And that's the test that controls here, and the real  
10 issue in this case is whether or not the use of ALPRs infringes  
11 on an expectation of privacy that society considers reasonable.

12 Plaintiff made statements about how defendants rely on  
13 old case law, but first of all, that simply isn't the case, and  
14 *Tuggle* is very instructive here. *Tuggle* is a case from the  
15 Seventh Circuit -- I apologize, let me get the date -- from  
16 2021, and it was reaffirmed as recently as six weeks ago by the  
17 Seventh Circuit in *United States v. House*.

18 In *Tuggle*, the court upheld the use of pole cameras to  
19 capture the front door of the defendant's home for 18 months.  
20 The Seventh Circuit held that this didn't constitute a search  
21 and stated that the government's use of technology in public  
22 use, while occupying a place it was lawfully enabled to be, to  
23 observe plaintiff's visible happenings does not run afoul of  
24 the Fourth Amendment, and that's the rationale that applies  
25 here.

1           There are cases that show that there is no expectation  
2 of privacy in your license plate number because that's publicly  
3 displayed as required by law every time that you're driving.  
4 That was discussed by the Seventh Circuit in *United States v.*  
5 *Miranda-Sotolongo* and also by the Supreme Court, I believe it's  
6 *New York v. Class*.

7           Moreover, the law from the *United States v. Knotts*,  
8 which explained that there's no expectation in privacy on  
9 public streets, is still good law. There's a portion of  
10 plaintiffs' response or reply brief where they attempt to  
11 distinguish this from the later case of *United States v. Jones*,  
12 but as explained in more detail in the briefing, *Jones* in no  
13 way overruled *Knotts*, and certainly not the holding that there  
14 isn't an expectation of privacy in your movement on a public  
15 road.

16           And then plaintiffs also spent a significant amount of  
17 time focusing on this aggregate data theory that was presented  
18 in the *Carpenter* and the *Leaders of a Beautiful Struggle* cases.  
19 But if you look at the type of data that was available in those  
20 cases and compare it with the data that's available here, they  
21 are not comparable.

22           You know, *Carpenter* was looking at the historic  
23 culling of cellphone data, and *Leaders of a Beautiful Struggle*  
24 had a much more expansive kind of surveillance system that  
25 included drones throughout the City of Baltimore, and the

1 courts in those cases specifically noted how using that type of  
2 data allowed the government to be able to recreate kind of the  
3 whole of an individual's movements. I believe it was the  
4 *Leaders of a Beautiful Struggle* case that equated it to almost  
5 having an ankle monitor on the individuals. And looking at  
6 what's alleged here, that simply isn't the case.

7           Again, these are cameras that capture license plate  
8 data on highways and expressways. It's simply unreasonable to  
9 conclude that that means that you could really recreate any,  
10 let alone the whole, of an individual's movements.

11           It doesn't show information about, you know, what  
12 businesses somebody's going to, whose homes they're visiting,  
13 what doctors' offices, lawyers, religious institutions, or  
14 really any location that they're actually ending up at.

15           As such, you know, this idea that these ALPRs are  
16 creating this dragnet surveillance system, as plaintiffs claim,  
17 is really just well beyond the idea of what is plausible based  
18 on the allegations in the complaint.

19           Moreover, defendants want to note that plaintiff has  
20 ignored that there are cases from this circuit specifically  
21 holding that ALPRs do not violate the Fourth Amendment.  
22 Specifically, that was *United States v. Brown* and *United States*  
23 *v. Porter*.

24           And those cases, when reaching that conclusion that  
25 ALPR data simply did not amount to the level of kind of



1 surveillance that was at issue in *Carpenter*, *Leaders of a*  
2 *Beautiful Struggle*, actually specifically addressed *Carpenter*  
3 and found that ALPRs are constitutional.

4           So overall, this amounts to a case where the  
5 plaintiffs are unhappy with a state statute. But unhappiness  
6 and disagreement with a law does not render the law  
7 unconstitutional, and it's well-established that the use of  
8 ALPRs falls squarely within the confines of the Fourth  
9 Amendment, and, as such, plaintiffs' claims ultimately fail and  
10 should be dismissed.

11           And then just to briefly touch on the other factors  
12 present that would need to be met should plaintiff be entitled  
13 to a preliminary injunction, you know, those factors also show  
14 why it is that a preliminary injunction is not appropriate  
15 here.

16           Again, the first question that the courts look at is  
17 the likelihood of success on the merits, and as I've just  
18 explained and as is discussed at length in the briefing, it is  
19 defendants' position that plaintiffs cannot succeed on the  
20 merits of their claims and that those claims should be  
21 dismissed. But either way, plaintiffs also have not been able  
22 to show that they've suffered any sort of irreparable harm that  
23 would warrant kind of the extreme measure that is a preliminary  
24 injunction.

25           As pointed out in the briefing, plaintiffs waited

1 several years to file this lawsuit, and we'll concede that a  
2 delay is not always -- you know, a delay isn't definitive proof  
3 that there isn't irreparable harm, but plaintiffs' own  
4 statements that they didn't file sooner partially because they  
5 weren't even aware of the law certainly undercuts the idea that  
6 this is such urgency that a preliminary injunction enjoining  
7 ISP from, you know, enforcing the law as written is warranted.

8           And then, moreover, the balance of harms here would  
9 tip decidedly in the State's favor. As explained in the  
10 briefing, when the State is the defendant, the public interest,  
11 and, you know, the State's interests kind of merge, and not  
12 only is it in general a significant burden to enjoin a state  
13 from enforcing its own laws, that's particularly present here,  
14 given that this is a statute that's designed specifically to  
15 promote public safety.

16           So any sort of injunction would be a significant  
17 burden to the public interest, and that, balanced with the fact  
18 that the plaintiffs haven't succeeded on stating a viable  
19 Fourth Amendment claim in the first place, shows that an  
20 injunction is certainly not proper in this situation.

21           As such, defendants would request that this Court both  
22 deny plaintiffs' motion for preliminary injunction and dismiss  
23 plaintiffs' complaint.

24           THE COURT: Okay. Thanks.

25           I'll come back to plaintiff then.

1           MR. STEPHENS: Sure, Your Honor. I just -- a few  
2 things in response.

3           On the Eleventh Amendment, I don't want to spend too  
4 much time on it because I -- ultimately Director Kelly is still  
5 in the case, and so we're moving forward with the case either  
6 way.

7           I would stand on what we said in the briefs about the  
8 Governor and Attorney General. And if you disagree with us,  
9 that's actually fine because Director Kelly is still in the  
10 case. I still think they are proper parties. I don't know --  
11 I honestly don't why the State cares so much because it's kind  
12 of symbolic.

13           To be clear, she said we're just causing the use --  
14 we're saying the use of ALPRs, we're actually not challenging  
15 the use, we're challenging the storing of the information, if  
16 that makes sense. It's a bit different just to clarify that.  
17 Just because we haven't cited case law about ALPRS, there isn't  
18 much appellate case law. We have cited to everything I found  
19 just because this technology is very new, and *Carpenter* is  
20 relatively new. It's only about six years old, so there isn't  
21 a ton of case law.

22           The cases -- the couple case -- mostly the cases that  
23 have dealt with this are suppression motions in a criminal --  
24 particular criminal prosecution of a particular individual  
25 dealing with one or two cameras for the most part.

1           Now, the case we have cited which I think is most  
2     analogous is the Fourth Circuit case and is *Carpenter* itself.  
3     I don't -- I wouldn't -- I don't really know what she means by  
4     an ideological objection to the statute. I mean, I think our  
5     objection is an objection that is based in the privacy concerns  
6     of the Fourth Amendment, and I don't -- I'm not even sure  
7     that's an ideological point.

8           It's not a left or a right or any kind of thing like  
9     that. It's a concern about privacy, and we can agree to  
10    disagree about how to set the standards for privacy, but it's  
11    -- you know, it seems like a very straightforward legal  
12    argument about what the scope of the Fourth Amendment should  
13    be.

14           On -- on the point about the other jurisdictions,  
15    they're relevant because ISP has access to that data, right,  
16    and so ISP can use that data just like they can use the data  
17    they're collecting from their own cameras.

18           So while our lawsuit here is focused on them, we sued  
19    them because we had to start somewhere, and I submit that the  
20    fact that some other jurisdiction or some other agency might be  
21    violating the Constitution is not a defense of ISP's violating  
22    it.

23           And so that -- but that subject is relevant because  
24    ISP has it and they can use that data through data sharing, as  
25    well as sharing their data with those other jurisdictions.

1           On the *Katz* point, I think *Carpenter* establishes the  
2 reasonable expectation of privacy that society is going to  
3 recognize. The Supreme Court recognized it in *Carpenter*. It's  
4 the expectation of privacy in your physical movements, and it's  
5 in the aggregation of your physical movements, the whole of  
6 your physical movements, which is what makes it different from  
7 the other earlier cases we were talking about.

8           *Tuggle* is a good example because in *Tuggle*, again, you  
9 have -- I think it's three cameras that are pointing at the  
10 same house, if I remember right, but it's the same house. It's  
11 one location over an extended period of time. It's the same  
12 kind of data you could have collected had you put a police  
13 officer on the roof across the street and had him watching that  
14 one spot, right, and so the fact -- and so that's not what  
15 *Carpenter* is concerned with, right?

16           *Carpenter* is not concerned with a single location of  
17 the man's cellphone. *Carpenter* is concerned with the fact that  
18 they got months of his cellphone data in order to track his  
19 whereabouts to show that he was in the vicinity of these -- I  
20 think they were Radio Shack stores or T-Mobile stores. They  
21 were, like, cellphone stores ironically enough that he was  
22 robbing.

23           And so that is the *Carpenter* point. The cases she's  
24 talking about license plates are -- they're a cop -- they're  
25 generally a cop pulls someone over and runs a plate. You know,

1 they've had someone reason to pull someone over. They run the  
2 plate. They find out there's a warrant, et cetera, and it's  
3 certainly about, like, the good faith of the police officer.  
4 It's not about the collection, aggregation of people's cars and  
5 everywhere they're going and the car as a stand-in for the  
6 person as a way of tracking the person's movement. It's just a  
7 -- they're dealing with a different kind of situation.

8           The *Leaders of the Beautiful Struggle* case I think is  
9 more on point -- she said was multiple drones by memory.  
10 Maybe she's right. I thought it was one plane that was flying  
11 around the city, but in any case, it was a camera that was  
12 hundreds of feet in the air, and so it's just following these  
13 blocks, right? And so the kind of -- I think with *Carpenter*  
14 and with this and with the Fourth Circuit case, you're looking  
15 at different kind of -- different sorts is -- they had  
16 different kind of resolutions, right?

17           In some ways, *Carpenter* is higher resolution because  
18 people carry their cellphones maybe more than in their car, but  
19 on the other hand, the camera takes a picture of your exact  
20 location, whereas the cellphone is -- location is an  
21 approximate, it's sort of a triangulation, right, and the  
22 camera is taking a picture of you, right?

23           And so in the Fourth Circuit case, they have in some  
24 ways a more full picture of the city because basically they're  
25 taking a big picture of the city and seeing every car drive

1 around it is basically what they're doing. So instead of  
2 having multiple cameras, driving one big camera and recording  
3 that way. That's the difference in the two cases.

4 And so we think that the same principle applies here  
5 as there because we don't think -- we think it's a mistake to  
6 say, well, once people got out of their car, we're not  
7 following them anymore. The question is are you following them  
8 enough.

9 When people got out of their cars in Baltimore, they  
10 were -- they could escape the surveillance maybe, but that was  
11 still enough -- still enough they were tracking people from a  
12 distance without any specificity to be able to identify the  
13 people. They could just see the blue car going up Main Street,  
14 right?

15 And, you know, in *Carpenter*, people leave their  
16 cellphones at home, some people go off the grid for days.  
17 There are times when you don't have your cellphone either,  
18 right? And so -- and, oh, cellphone you can give your  
19 cellphone -- my wife will borrow my cellphone occasionally if  
20 she needs something, right? So there's all sorts of -- it's  
21 not that *Carpenter* requires a perfect picture of everything.  
22 That's not what it's talking about. It's talking about a  
23 sufficient aggregation of a sufficient picture of our  
24 movements.

25 And so we would submit that, yes, this is like having

1 an ankle monitor. It's just a matter of how often the ankle  
2 monitor is turned on.

3 On this point about us waiting years, I mean, I'll  
4 just tell you my clients just weren't aware that the State was  
5 doing this. I don't know why it matters that they didn't find  
6 out until a couple years after it was passed. They don't seem  
7 to be making any kind of statute of limitations argument, and I  
8 don't -- so I don't really know what import it is.

9 I mean, I think -- it's not -- it is urgent in the  
10 sense that this is harm that's happening every day, but it is  
11 not the kind of thing where we thought we should move for any  
12 kind of emergency or anything, and so we've tried to do this  
13 under normal procedures as we litigated the case, and I don't  
14 think that's a bad thing. So I don't really know what the  
15 delay says either way.

16 Those were -- those were the things I had noted.

17 THE COURT: Okay, thank you.

18 And I guess we were going to come back to the defense.

19 MS. JOHNSTON: Thank you. Yes, just a couple quick  
20 points.

21 One is to clarify just kind of a term here. I -- when  
22 I have been using the term usage of ALPRs or the use of the  
23 ALPRs, I've meant the storage of the data as well as, you know,  
24 the actual moment that it captures the data.

25 So just to clarify, we are encompassing both of those



1 kind of concepts in the term of using ALPRs because that is how  
2 it is that they're operating right now.

3 I would like to point out that, once again, any  
4 statements about what it is that's going on in other  
5 jurisdictions or other towns are doing with any sort of camera  
6 program, if you will, is not what's at issue in this lawsuit.  
7 This lawsuit only relates to this specific Act as operated by  
8 the Illinois State Police. Nothing else is at issue here.

9 And then to kind of address some of plaintiffs' points  
10 about the scope of what is being captured and the invasiveness  
11 of the ALPRs and the other cases that plaintiff cited to, it's  
12 just well-established, and as discussed in *Brown* and *Porter*  
13 that this program simply does not create that ability to  
14 recreate and trace an individual's movement that was at issue  
15 at *Carpenter* or *Leaders of a Beautiful Struggle*.

16 Again, these are cameras located on highways and  
17 expressways. They are not providing the full comprehensive  
18 picture that plaintiffs kind of allege they are. This is not  
19 the dragnet surveillance that they think it is. But, moreover,  
20 there's still the issue with the fact that there is no  
21 expectation of privacy in your publicly displayed license plate  
22 information or when you're driving on public roads.

23 That's been, you know, well-established, and it  
24 doesn't matter if it's a police officer running the plates or  
25 the information being captured on an ALPR. It's just publicly

1 displayed information that is not private for purposes of, you  
2 know, the Fourth Amendment the way the plaintiffs claim it is.

3           There's a final one we'd like to note that, you know,  
4 we do believe that *Tuggle* is still instructive here and  
5 arguably that the issue in *Tuggle* is much more invasive in  
6 terms of the information that was made available by the use of  
7 the three pole cameras that were focused on the front door of  
8 somebody's house day in, day out for 18 months showing every  
9 time they came and left their home, when they did that, what  
10 they had with them, who visited them, what deliveries they  
11 received. You know, that paints a significantly more  
12 comprehensive picture of what's going on with somebody than  
13 capturing license plate information on highways and  
14 expressways.

15           And as one final comment that I forgot to address  
16 before, again, to the idea that the Court would be able to  
17 enter an injunction preventing the enforcement of the law in  
18 the entirety despite the fact that there isn't class  
19 certification, it's true that that type of sweeping relief can  
20 be, you know, warranted in very extreme circumstances. But in  
21 order to get there, they would need to at least show that the  
22 named plaintiffs are able to obtain relief.

23           And for the reasons that defendant has posited here  
24 and in the briefing, the plaintiffs can't state a viable claim  
25 in and of themselves, let alone one that would warrant granting

1     that level of relief.

2             THE COURT:   Okay.

3             All right.   Well, thanks to you both.   I think at this  
4     point, I'll just ask a few questions.

5             So I think one would be can we just talk a little bit  
6     about what -- what exactly you're challenging, and you've both  
7     referred to this at different times, but what are -- is the  
8     plaintiff challenging the collection in general?   Is the  
9     plaintiff challenging the storing?   And how about the use of  
10    the data?

11            Because there's -- I mean, there's multiple things  
12    that are happening --

13            MR. STEPHENS:   Sure.

14            THE COURT:   -- right?   There's the cameras are out  
15    there, and then pictures -- cameras are taking pictures --

16            MR. STEPHENS:   And we're focused on the kind of  
17    historical storing aggregation, Your Honor.

18            THE COURT:   Okay.

19            MR. STEPHENS:   And, right, and the real time, I think  
20    because of exigent circumstances and because, right, I think  
21    that, you know, in real-time situations, there will either be  
22    exigent circumstances or even if there wasn't, I think probably  
23    there could be reason to get a warrant.

24            So I think I would be asking too much if I was asking  
25    this Court to order you to rip the cameras out -- them to rip

1 the cameras out, but we think, you know, for the purpose of  
2 this injunction, we're simply asking for a warrant process.

3 And now if we get down the road here, I think -- I  
4 mean, our position would be that the storing of the data and  
5 the aggregation of the data creates the Fourth Amendment  
6 violation, so this should be -- the system should be limited to  
7 real-time exigent uses if they're going to be used at all.

8 If I can get you that far, an alternative to our  
9 argument would be a warrant requirement, a probable cause  
10 requirement that they can collect this data, but they cannot  
11 actually go in and look for anything unless they go through  
12 constitutional process.

13 THE COURT: Okay. But then, okay, so if the relief  
14 that you're seeking is -- the first-line request is limit the  
15 use of the data to exigent uses, so we need to apprehend a  
16 suspect or we are looking for a kidnapped person or we're  
17 looking for a missing person or -- so if the use of the data  
18 were limited to that, or even if the second-line position is,  
19 okay, in the alternative, request a warrant before you -- you,  
20 the Illinois State Police -- actually use any of the data  
21 that's been collected, then I guess what are the consequences  
22 of that for standing? Because then if -- I mean, is there a  
23 real -- at that point, is there a real risk that these  
24 plaintiffs will be subject to, for example, you know, like a  
25 warrant request?

1           MR. STEPHENS: So, I mean -- I -- I -- whether or not  
2 my -- I guess I don't want to speculate as to whether my  
3 clients will one day be subject to a criminal investigation,  
4 but I think just in terms of standing, I mean, I think the way  
5 we look at it is the aggregation of the data and the collecting  
6 of everyone's movements is the injury, and so -- but we  
7 understand that in the Fourth Amendment context, the Fourth  
8 Amendment is a reasonableness standard in basically all cases,  
9 and so because of that, you know, the truth is there's probably  
10 a lot of permutations of what one could consider reasonable and  
11 a lot of ways you could write these policies and these  
12 procedures, I think.

13           But I think that the ultimate -- you know, the  
14 reasonableness means that we, you know, have to -- I have to be  
15 understandable about the real-time tracking about these other  
16 things, but I think standing on the aggregation point and  
17 pushing back on that and saying that that is the bridge too far  
18 and then if we limit that, then that will resolve the injury to  
19 my clients and to -- and that that -- but that is -- that gives  
20 them the protection that they can get, right? I mean -- in the  
21 same way that, you know, even in the case of a warrant, you  
22 know, that's not ideal, but at least then, you know, you have  
23 constitutional process and, therefore, the searches are, you  
24 know, going to be limited to areas where a court has overseen  
25 it and said it's reasonable.

1           So, I mean, I think -- like, I think what it comes  
2 down to is, you know, I think this is -- the relief here is  
3 kind of a sliding scale of, you know, the more relief we can  
4 get, the better.

5           I think that, you know, if I can only get the Court to  
6 provide some limited process, I think it's better than nothing.  
7 And so that's how I kind of think about it, as the more  
8 protection we can get the better, if that makes sense, and so  
9 in that sense I think the standing and the resolution of the  
10 injury is not binary but is the more privacy protection one can  
11 get, the better -- the less injured they are for lack of a  
12 better way of putting it.

13           THE COURT: Okay. Any other, I guess, comments from  
14 either party on the -- well, I guess on the scope of the  
15 requested relief?

16           MR. STEPHENS: I think I explained -- I explained our  
17 position. I don't know if I have anything more to say.

18           MS. JOHNSTON: Judge, and based on Your Honor's last  
19 question, just to clarify our position here because I know that  
20 there was a little bit of a shift in the briefing versus the  
21 standing argument in the defendants' initial response to the  
22 preliminary injunction and motion to dismiss versus the reply.

23           To be clear, it's our position that they do not have  
24 standing here under any theory, be it the, you know, retention  
25 of the data or the idea that it would be used, but we did note

1 that there were some issues with this vague concept that the  
2 retention itself creates an injury. Again, there is no injury  
3 here because there is no Fourth Amendment violation.

4 But, yes, I think it is significant that these  
5 individuals have never had the data used against them. There's  
6 no allegation that they have any reason to believe it will be  
7 used against them. Anything to that effect would be pure  
8 speculation, and if this was used against them at some point in  
9 time, they could file a motion to suppress. There would be  
10 other options there, and then they would have, you know,  
11 standing to challenge it in that specific context. But this  
12 kind of just broad statement that they have standing to  
13 challenge this information that has never been used against  
14 them is insufficient.

15 THE COURT: Okay. Let me -- maybe just let me make  
16 sure I understand what the request is.

17 So the first-line request for relief is -- there's no  
18 request for relief as to please stop using the cameras as I'm  
19 hearing it. It's the first-line request is stop using --  
20 continue using cameras, but you can only use the data when  
21 there's exigent circumstances.

22 Is that -- is that fair?

23 MR. STEPHENS: I suppose I should also concede that if  
24 they get a warrant for a specific purpose, they could -- that  
25 would be an exigent circumstance, I guess, maybe. I don't

1 know. Something like that, you know.

2 THE COURT: Okay. So the request is --

3 MR. STEPHENS: The problem is the months and months of  
4 data is what we're objecting to.

5 THE COURT: -- storing the data for months, and right  
6 now it's --

7 MS. JOHNSTON: 90 days.

8 THE COURT: Remind me? It's 90 days? Okay.

9 MS. JOHNSTON: I believe so, Your Honor.

10 THE COURT: Okay. And so is the request shorten the  
11 period of time, or is the request, okay, you can continue to  
12 store for 90 days, but you can only access and search the data  
13 either if there's exigent circumstances or if you go through a  
14 warrant process?

15 MR. STEPHENS: Right, yes, Your Honor.

16 Well, as I said, we had -- our first-line position is  
17 that, yes, is that they can't keep it for 90 days. I recognize  
18 the line-drawing problem saying it should be 24 hours or one  
19 hour or 72 hours, or something -- I realize -- I recognize that  
20 sort of issue there.

21 But basically that real-time use is -- and exigent use  
22 is acceptable, but the months and months of storing, you  
23 know -- this is 90 days, about four months, it's about the same  
24 amount of data as what they actually had on Mr. Carpenter in  
25 terms of the time, the amount of time of his movements, and I



1 think actually it was similar in *Jones*, too.

2 But, like I said, in our target position where if we  
3 can get just a warrant process, then we would be able to keep  
4 the data, but they would not be able to open the box without a  
5 court's permission basically, and it would be stored on the --  
6 it's actually stored on, I believe, the company servers, I  
7 believe.

8 And it would be there, and then it actually would be,  
9 kind of like *Carpenter*, in *Carpenter* they had to go to the  
10 phone company and ask for the data, and here they would have to  
11 get a -- go through a process and get the data just like they  
12 did there, except there they had a subpoena, and the Supreme  
13 Court said you need a warrant.

14 THE COURT: Just to clarify though, so is the request  
15 shorten the length of time, you know, like add a time-based  
16 restriction on the storage, or is it -- there's no request as  
17 to the length of this time. It's more, you know --

18 MR. STEPHENS: I mean -- I think the request would be  
19 to set it to zero, Your Honor, but if you want to have a de  
20 minimus exception or something, or if the best I can do is get  
21 the Court to say only for 24 hours, then I guess I'll take it.  
22 But, you know, our idea is that they shouldn't be basically be  
23 able to store at all.

24 I realize there's a philosophical thing about, like,  
25 the data is generated and what do you do with it, I suppose.

1 Our objection is to the long-term tracking, and so -- I think I  
2 should actually clarify that.

3 For purposes of today, the relief for preliminary  
4 injunction, we'd just ask for the warrant because we understand  
5 that the balancing of the interests means that that's probably  
6 we're all going to ask for as the case moves forward.

7 For preliminary injunction, we only asked for the  
8 temporary relief for our kind of alternative argument, if that  
9 makes sense.

10 THE COURT: Okay. And, I'm sorry, I don't mean to  
11 keep asking the same question --

12 MR. STEPHENS: I'm sorry if I haven't been -- if I  
13 haven't been helping, Your Honor. I'm sorry.

14 THE COURT: No, I'm just -- any time there's a request  
15 for an injunction, you know, just over time in my experience, a  
16 lot comes down to what exactly are the terms of the injunction?  
17 And the injunction has to be specific, and it can't just be --  
18 I mean, at the end of the day, when someone requests an  
19 injunction, someone has to put -- I have to put pen to paper  
20 and write in words --

21 MR. STEPHENS: Sure.

22 THE COURT: -- reduce to words what exactly I'm doing,  
23 what I'm ordering, and so I guess that's why I'm trying to get  
24 clarity about what exactly would that look like; what's the  
25 scope of the relief that -- what would the injunction actually

1 say?

2 Because that -- and I'm not saying -- I'm not trying  
3 to telegraph, by asking for -- asking that question, I'm not  
4 trying to telegraph, you know, how I'm leaning on the  
5 earlier -- logically earlier issue, logically, you know, prior  
6 issue of -- preceding issue of whether to grant the injunction  
7 or not. It's just that what exactly is the scope of the  
8 injunction? It's important to figure out in order to assess  
9 the request.

10 MR. STEPHENS: And I agree with you. I actually think  
11 that is the most complicated part of the case for us. That is  
12 actually the part that I have thought the most about and why we  
13 have kind of an alternative argument there.

14 And I would -- so first of all, I would say for  
15 purposes of today, the preliminary injunction, that we wrote  
16 specifically as the Court should say that you cannot search the  
17 database without a warrant basically. You cannot access the  
18 data that's being stored without going for a warrant.

19 That's what we asked for -- that's the injunction  
20 we're asking you to write today is say police cannot use this  
21 data without getting a warrant first.

22 So that is the scope of the relief we asked for in the  
23 preliminary injunction. In the longer run, we think the import  
24 of our argument is that they shouldn't be able to aggregate the  
25 data at all. But, again, our fallback is that, again, if --

1 if, you know, if we can just get the -- they have to have a  
2 warrant, then that would be our alternative argument.

3 So you can write it -- so you can write it either --  
4 so you could write the final permanent injunction one day if we  
5 win as either -- we would prefer it as they may not store the  
6 data. They may only use these for exigent real time and with a  
7 warrant, or if I can't get that, they can store the data, but  
8 they have to get a warrant to access it. Those are our --  
9 those are our two -- those are our first request and our  
10 alternate request.

11 THE COURT: Okay. And --

12 MR. STEPHENS: Can I say one more thing, Your Honor?

13 THE COURT: Sure.

14 MR. STEPHENS: I actually think if we ever get that  
15 far, and we're not there today, I mean because this is so  
16 policy directed, maybe the answer is if we're to get that far,  
17 maybe defendants could have a proposal of a policy or practice  
18 or something that, you know, they would accept that would be  
19 within the confines of the limitations we're asking for, so  
20 that's also, you know, something we'd be open to if we get that  
21 far.

22 For today -- but for today, we're focused on the  
23 preliminary injunction, and we're asking simply that this Court  
24 order -- order the warrant requirement.

25 THE COURT: Okay. And would an injunction -- would

1 any injunction apply just to the plaintiffs' data, or would it  
2 apply to all data statewide?

3 MR. STEPHENS: So -- so we've asked for all data --  
4 this is actually discussed in the brief that we cite to the  
5 Seventh Circuit case law, and they've admitted that under  
6 Seventh Circuit case law, it can be appropriate, and we think  
7 this is such a circumstance, to issue a general injunction  
8 against the program that would -- because that's the way it  
9 provides complete relief to the parties and also avoids  
10 duplicative litigation, because otherwise everyone is going to  
11 have to come in with their own lawsuit about their Fourth  
12 Amendment violation. And we think this is the kind of  
13 situation that the Seventh Circuit is talking about when it  
14 says that a broader injunction is appropriate.

15 If you don't agree with me on that, we think that's  
16 still again on a sliding scale a protection for our clients in  
17 the first instance, would still provide them relief from their  
18 injury, an injunction limited to our clients would at least  
19 provide them the relief from their injury in the case before  
20 it.

21 THE COURT: Okay. And, again, I want to clarify that  
22 by asking these questions, I'm not trying to telegraph what --  
23 where I'm thinking of ruling on whether there should be an  
24 injunction or not. I'm just trying to make sure I understand  
25 the scope of the request -- or the -- you know, the request for

1 relief and what the request for the injunction looks like.

2 Okay. I guess moving on to another topic, can anyone  
3 or can you clarify, I think you both mentioned at times cases  
4 involving ALPRs, but, I'm sorry, can you just come back to that  
5 and clarify that?

6 Are there, as far as you know, cases actually  
7 involving this type of program?

8 MS. JOHNSTON: Yes, Your Honor. There are two that  
9 were cited -- let me pull them up.

10 So here, out of the Northern District here, there were  
11 two that were specifically cited in defendants' briefing or  
12 addressed therein. The first was *United States v. Brown*, and  
13 that is -- let me see -- Case No. 19 CR 949. It's 2021 U.S.  
14 District LEXIS 206153. I also have the Westlaw here if that's  
15 preferable to you.

16 THE COURT: Sure. I think it would be good to have  
17 both.

18 MS. JOHNSTON: Okay. That's 2021 WL 4963602. And in  
19 that case, again, the use of an ALPR reader against a specific  
20 defendant was upheld, and it did include discussions  
21 specifically about how ALPRs did not -- the agents did not  
22 obtain the privacies of Brown's life or exploit a  
23 too-permeating police surveillance. There is no privacy  
24 interest in license plates, internal citations there. I could  
25 read those if you like.

1           The court goes on to cite the Supreme Court in *New*  
2 *York v. Class*, 475 U.S. 106 at 113, it's 1986, stating --  
3 quoting that "every operator of a motor vehicle must expect  
4 that the state, in enforcing its regulations, will intrude to  
5 some extent upon that operator's privacy," and "it is  
6 unreasonable to have an expectation of privacy in an object  
7 required by law to be located in a place ordinarily in plain  
8 view from the exterior of the automobile. The exterior of a  
9 car, of course, is thrust into the public eye, and thus to  
10 examine it does not constitute a search."

11           There's continued discussion within that case.

12           The second case from this district that was referenced  
13 was *United States v. Porter*. That's decided on January 13,  
14 2022. That's Case No. 21 CR 87, and it's 2022 U.S. District  
15 LEXIS, 6755, or 2022 WL 124563. Again, it says similar  
16 rationale, and also we've looked -- cited the principle from  
17 *United States v. Knotts*, that there's not a reasonable  
18 expectation of privacy for information that's voluntarily  
19 displayed to the public, especially when traveling in  
20 automobiles, and noted that the use of ALPR data did not, once  
21 again, kind of show the whole of an individual's movements.

22           And those cases are also discussed within the  
23 briefing, starting with defendants' response to the PI and  
24 opening brief and through the remaining.

25           THE COURT: Okay. And those are criminal cases. It

1 sounds like at least *Brown* -- I mean, it sounds like these are  
2 coming up in basically individual --

3 MR. STEPHENS: I think they're both suppression  
4 motions, I think.

5 THE COURT: -- individual motions to suppress.

6 MS. JOHNSTON: Yes.

7 THE COURT: Okay.

8 MR. STEPHENS: And -- if you had more, Your Honor, I  
9 was going to respond. I don't know if --

10 THE COURT: Oh, no. Please go ahead.

11 MR. STEPHENS: Yes, so those two cases -- first of  
12 all, they're district court cases, so they're not precedential  
13 as such.

14 *Porter* actually got a warrant for the GPS tracker, so  
15 I'm not even sure if that counts in the end. *Brown*, again,  
16 motion to suppress. All of the other cases that I could find,  
17 at least as of a few months ago, are in our PI motion at pages  
18 10 to 11. There's very little appellate case law. There's a  
19 case from the Massachusetts Supreme Court, which they actually  
20 pretty much agree with me in principle, but they say the record  
21 before them was insufficient because it only showed two cameras  
22 and it didn't show the full system of cameras that you would  
23 need to show, and so I read that and I said, okay, let's see if  
24 I can show that and create that record.

25 And so in all the other cases, there's another -- all



1 the other cases are basically suppression motions, I think more  
2 or less, and they're all basically about an individual  
3 defendant, and the record before the court in that case is a  
4 couple of data points and doesn't really capture that, capture  
5 the full scope of what's going on.

6           There is, in fact, a state court case that agrees with  
7 me, and we attached that as an exhibit to our PI motion. It's  
8 not -- I think at least when we filed, it wasn't on Westlaw or  
9 LEXIS, but there's actually a -- yes, a state court suppression  
10 opinion from Norfolk from this year that actually  
11 wholeheartedly agrees with me on every point, so I made sure to  
12 attach that to our PI motion.

13           But, yes, the case law specific to ALPRs is pretty  
14 limited. It's mostly district court rulings on suppression  
15 motions, and the couple of appellate cases are cited in our PI  
16 motion at pages 10 and 11, mainly the Massachusetts case and a  
17 concurring opinion from the Ninth Circuit.

18           MS. JOHNSTON: Your Honor, if I may briefly respond  
19 there?

20           Specifically to plaintiffs' assertion about the  
21 Massachusetts case which is -- my apologies --

22           MR. STEPHENS: *Commonwealth v. McCarthy* is what you're  
23 talking about.

24           MS. JOHNSTON: I am, yes. It's *Commonwealth v.*  
25 *McCarthy*, 484 Mass. 493, 2020. Again, we would disagree with

1 plaintiffs' assessment of that case, as the Massachusetts  
2 Supreme Court actually upheld the use of the ALPRs in that  
3 situation, specifically noted that "This limited surveillance  
4 does not allow the Commonwealth to monitor the whole of the  
5 defendant's public movements or even his progress on a single  
6 journey." And that's at pages 508 to 509 of that opinion.

7           And, again, I think in some ways, the availability of  
8 this being on a motion to suppress does go back and highlight  
9 some of the problems with a standing argument, if you will.  
10 Again, there's a -- and going into the really extreme level of  
11 relief that has been requested here. They're asking to require  
12 warrants for the use of this entirely for every individual  
13 across the state. The scope of relief that was requested and  
14 clarified earlier seemed to not even allow for it to be used in  
15 exigent circumstances based on what it is that they're asking  
16 for.

17           And given that there is a clear remedy that would be  
18 available in the event that this information was ever used  
19 against a plaintiff, again, it hasn't been now, and there's no  
20 allegation that there's a realistic, you know, reason to  
21 believe that it will be used against them, they have an avenue  
22 by which they can challenge the use through a motion to  
23 suppress.

24           I think that just highlights how kind of broad what it  
25 is that plaintiffs are requesting here is and especially given

1 the, as defendants would say, you know, fatal flaws to the  
2 actual Fourth Amendment claim itself, it highlights how  
3 inappropriate an injunction would be in this situation.

4 MR. STEPHENS: So since we're quoting from that case,  
5 what she quoted, I don't know exactly where it is in the  
6 opinion, but the opinion goes on to say: "With enough cameras  
7 in enough location, the data from the ALPR would invade  
8 reasonable expectation of privacy and would constitute a search  
9 for constitutional purposes," but the court said it only had  
10 four cameras on -- it was the bridge that goes to is it Cape  
11 Cod or Martha's Vineyard, I forget, but it was -- it was --  
12 they just -- they said they just had that in the record, they  
13 couldn't rule on that theory, but they actually endorsed that  
14 theory as I just quoted.

15 The motion to suppress point, I mean, if a motion to  
16 suppress at the end cures any Fourth Amendment injury, then the  
17 cops could just break down our door and say don't worry about  
18 it, file a suppression motion later. That isn't -- I don't  
19 think that's an adequate remedy for what is, in fact, a tort,  
20 right? A Fourth Amendment violation is a tort, and you can sue  
21 the cops outside of qualified, you know, qualified immunity  
22 aside, for violating it, right?

23 And so I don't think that -- I don't think that's an  
24 adequate remedy in the end for what we're talking about.

25 I mean, and as to the scope of the relief or the

1 extremity of our relief, we think the extremity of the  
2 surveillance here is beyond the pale, Your Honor, and so we are  
3 asking the Court to do something -- to do something in response  
4 to that.

5 THE COURT: Okay. And then coming back, I guess, to  
6 the reasonable expectation of privacy issue, I -- I mean if you  
7 could just -- I know you've both addressed this at length, but  
8 maybe if you could give just a highlights version of or kind of  
9 summary of your point on that.

10 I mean, from what I was hearing, I take it the  
11 plaintiff is saying, okay, we -- we understand this is -- the  
12 license plates are publicly available, but the problem is with  
13 the aggregation of the data.

14 It's not the same as -- so there's certainly case law  
15 that if something was in plain view of the police, then the  
16 police can use technology to assist in, you know, the plain  
17 view, and so that would be true of -- I mean, if you look at  
18 any individual license plate reader camera, I think -- I mean,  
19 that would be true. Someone could observe a license plate  
20 going by on the highway.

21 But the plaintiffs' argument is, well, it becomes  
22 different when you add all these different cameras across the  
23 entire highway system, and that's not something that any one  
24 individual could observe.

25 I think that's basically the gist.

1           MR. STEPHENS: Yeah, I think -- so, I mean, not  
2 specifically for the qualification, if they put a beeper in the  
3 car and they followed the car with like I think it really a  
4 directional thing, like it could detect which direction the  
5 tracking device was, and so they followed it that way, and the  
6 Supreme Court says, well, you're doing it in public, it's not a  
7 big deal.

8           They get to *Jones*, and the majority opinion in *Jones*  
9 is about the physical attachment of the GPS to the car, but  
10 actually there are five justices between the Alito opinion and  
11 the Sotomayor opinion, actually five justices who say that  
12 tracking Mr. Jones for months like that was different than the  
13 individual tail by physical -- by police officers in person.

14           And then *Carpenter* endorses that and says, again, the  
15 expectation of privacy is -- I think the way they put it is the  
16 whole of the physical movements. Now, the whole suggests a  
17 scope that I think if you read the case, I don't think it means  
18 you have to have literally, like, a drone over someone's head  
19 24/7 because the cellphone data wasn't quite that accurate and  
20 the Fourth Circuit case in Baltimore, that data was not the  
21 most perfect thing of everything. But it was this -- picture  
22 of aggregation of physical movements and here we have the  
23 aggregation of physical movements.

24           And so that is -- it's the expectation of privacy in  
25 the whole of your data is different than any individual data

1 point, and that is the import of the Massachusetts case we were  
2 just quoting from, and that is I think just a basic common  
3 sense we've all come to understand that any piece of metadata  
4 might not be very interesting, but if you put all of our  
5 metadata together, you get a pretty scary picture of our lives.

6 THE COURT: Okay. And the defense, on the other hand,  
7 you're saying -- well, you're obviously emphasizing the fact  
8 that the license plate, I mean, it's basically, it's similar to  
9 what the *Brown* case was saying. A license plate, I mean, it's  
10 by definition public. It's required by law to be public. It's  
11 required to be put on the public -- you know, sitting on your  
12 car. It's there to be legible by anyone who sees your car.  
13 The highways are public places.

14 MS. JOHNSTON: Yes, and I'll expand very, very briefly  
15 as it related to, and I'll direct the Court to there was some  
16 discussion in the *Tuggle* case about the ability to use  
17 technology and kind of enhance law enforcement senses in order  
18 to, you know, get information that's in the public view so long  
19 as they're at a place that the government is legally allowed to  
20 be. So there's some nice discussion there.

21 And then quickly to the point about *Knotts* and *Jones*.  
22 So the holding from *Knotts* that there isn't an expectation of  
23 privacy in your movement on a public roadway was in no way  
24 touched by *Jones*, which came later.

25 *Jones* specifically -- so in *Jones*, they actually

1 physically went and put a GPS tracker on the car, and there the  
2 court held that because there was that physical intrusion,  
3 basically the analysis on whether or not there was a Fourth  
4 Amendment violation could start and stop there.

5           It still said that, you know, in theory, there can be  
6 a Fourth Amendment violation even without physical intrusion.  
7 And in those situations, go look at the two-part analysis from  
8 *Katz*, which is what it is that defendants have largely been  
9 discussing, that reasonable expectation of privacy.

10           And as Your Honor appropriately summarized, yes,  
11 there's no reasonable expectation of privacy in the publicly  
12 displayed information or your travel on public thoroughfares.

13           And then turning last to the aggregate data theory,  
14 again, it just goes to this case is limited to the use of ALPRs  
15 as designated by the Act. It does not amount to the type of  
16 information that was available in *Carpenter* or *Leaders of a*  
17 *Beautiful Struggle* that is discussed again in the *Brown* case,  
18 and as such, it does not amount to a Fourth Amendment  
19 violation.

20           THE COURT: Okay. Is there a difference between the  
21 aggregate theory and the mosaic theory that some of the  
22 cases -- so there's the *House* case, it mentions the mosaic  
23 theory, whether a set of non-searches aggregated together  
24 amount to a search because their collection and subsequent  
25 analysis creates a revealing mosaic?

1           So is there any difference between the aggregate  
2 theory and this mosaic theory that comes up in the cases? And  
3 it looks like this *House* case is quoting an article from Orin  
4 Kerr from the Michigan Law Review.

5           MR. STEPHENS: Yeah, yes, I -- I haven't read  
6 Professor Kerr's article, though I'm familiar generally with  
7 what he said about this.

8           The -- I think where I would differ from what you just  
9 said about it is this, which is we're not alleging -- we're  
10 alleging that -- I mean, I guess if you want to understand  
11 *Carpenter* as the individual cellphone point would not have been  
12 a search. Subpoenaing one cellphone data point would not have  
13 been a search, but subpoenaing four months of them was, I guess  
14 *Carpenter* is a mosaic theory kind of case. I think that's how  
15 Professor Kerr thinks of it probably.

16           I think of it -- I don't quite conceptualize it that  
17 way, but I think -- we're -- it's getting at a similar idea,  
18 and ultimately -- the mosaic theory is not case law, but what's  
19 case law is *Carpenter*, so that's what I have to rely on. That  
20 is -- that way of interpreting and understanding it I think is  
21 one way, and I think it's useful in some ways. I think it  
22 misses certain things.

23           I think that the idea that, well, these things are are  
24 a complete finding on a search. I'm not sure if that's exactly  
25 true, but that might be a little philosophical and academic.



1 If we're talking about the mosaic theory, that's what we're  
2 talking about, I suppose.

3 So I don't -- I don't -- I don't know if I  
4 specifically want to endorse everything that's said about the  
5 mosaic theory, but we're working along similar lines. I think  
6 *Carpenter* is working along similar lines.

7 THE COURT: Okay. Well, I mean, if it is the mosaic  
8 theory, then how would the Seventh Circuit -- I mean, so  
9 there's -- in *Tuggle*, I think that case at some point, I have  
10 to go back and look, but I think it says that the mosaic theory  
11 has not received the court's, meaning the Supreme Court's full  
12 and affirmative adoption --

13 MR. STEPHENS: Yeah, I think --

14 THE COURT: -- you know, like *House* --

15 MR. STEPHENS: -- yeah, I think the mosaic theory is  
16 one -- Professor Kerr is one way of understanding and, you  
17 know, what the regime -- that was sort of I think Professor  
18 Kerr's understanding of the regime *Carpenter* was trying to  
19 communicate. I think that's how he thinks of it. I don't  
20 think the Supreme Court has endorsed the theory he said.

21 I think the Supreme Court is right about that, but  
22 then they did endorse *Carpenter*, and that's what we're relying  
23 on. So if *Carpenter* is a mosaic theory, I'm relying on a  
24 mosaic theory, but I don't -- I actually think they're a little  
25 bit different I suppose slightly. One is more of an academic

1 gloss on the case law we're trying to rely on.

2 I'm not asking this Court to endorse the mosaic  
3 theory, if that's what you're asking.

4 THE COURT: Well, I was just asking because *Tuggle* --

5 MR. STEPHENS: Yeah.

6 THE COURT: -- did -- had that comment about the  
7 mosaic theory has not received the court's full and affirmative  
8 adoption, and then *House* also declined to apply the mosaic  
9 theory because the Supreme Court had not directed lower courts  
10 to do so, so I just --

11 MR. STEPHENS: I think I would say, Your Honor, that  
12 they're simply saying that's not -- the Supreme Court hasn't  
13 gone that far yet. I don't think they're specifically -- I  
14 don't know, maybe -- correct me if I'm wrong, but I don't know  
15 that they're at least saying that the Supreme Court ruled  
16 against it or anything like that.

17 THE COURT: Okay.

18 All right, any other comments on the mosaic theory or  
19 *Carpenter*?

20 MS. JOHNSTON: Just briefly to say that I think that  
21 there is -- and I don't want to speak definitively. I think  
22 that there is a very slight difference between the mosaic and  
23 the aggregate data theory, but under either lens, it's  
24 defendants' position that this just doesn't meet that standard.  
25 So however it is that you could kind of look at it, this use of

1 ALPRs wouldn't get you to the place where there's a Fourth  
2 Amendment violation.

3 THE COURT: Okay.

4 Sorry. Just bear with me one second. I'm checking my  
5 notes to see whether I have any other questions.

6 I think I've asked everything that I had.

7 Okay. Yeah, I don't have any other questions. So  
8 maybe let me just give both of you any opportunity to say any  
9 final comments, if you have anything else.

10 MR. STEPHENS: I think the only thing I had noted is  
11 from when my friend was speaking when she talked about that we  
12 are not -- that what Illinois is doing here is not the kind of  
13 full-on, mass surveillance program that we've alleged, but I  
14 think the point I would make is we've alleged, this in the  
15 complaint and this is in a motion to dismiss that she has  
16 filed, and so the facts are, you know, taken in the light  
17 favorable to us in that context.

18 And so to the extent that the Court is unsure about  
19 whether the numbers or the data that we put in the complaint,  
20 which were the data as of May and I'm pretty sure the numbers  
21 are a lot higher now -- in fact, I know they are -- and I think  
22 that the answer then is simply let me get the discovery and let  
23 me show the dragnet. Let us establish just what the facts are  
24 and just how broad this program actually is, and that's what we  
25 would ask for.

1 MS. JOHNSTON: And as a final point, Your Honor,  
2 defendants would assert that this is a motion to dismiss, which  
3 means it needs to be based on the allegations of the complaint,  
4 and there is a plausibility standard there.

5 And these just kind of general statements about  
6 dragnet surveillance that don't actually hold up when you look  
7 at the program that's being -- or the statute that's actually  
8 being challenged should not allow plaintiff to then go on what  
9 was just described as basically a fishing expedition to get  
10 more information.

11 Plaintiff has challenged the use of ALPRs, which are  
12 specifically on highways and expressways and only capturing  
13 that information. There is no other kind of claim here. And  
14 looking at the existing case law related to the lack of  
15 expectation of privacy and publicly displayed information and  
16 travels on public roads and the case law from this circuit  
17 holding specifically that ALPRs do not amount to, you know, the  
18 level of data to kind of meet the aggregate theory threshold  
19 set forth in *Carpenter*, plaintiff simply hasn't made adequate  
20 allegations to support the claim. As such, it should be  
21 dismissed, and the PI should be denied.

22 THE COURT: Okay. I don't have any other questions.  
23 So thank you both very much. Anything -- I guess anything  
24 further at all?

25 MR. STEPHENS: No, Your Honor.

1 MS. JOHNSTON: No, Your Honor.

2 THE COURT: Okay. Thank you again for your arguments  
3 today. I really appreciate your taking the time.

4 And I will -- I need some time to consider what you  
5 said today, and then also I'll reach out either to -- I'll  
6 either send you a ruling in writing or if I decide to rule from  
7 the bench, I'll just reach out to schedule a ruling.

8 MR. STEPHENS: Okay.

9 MS. JOHNSTON: Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 (Concluded at 2:27 p.m.)

12 \* \* \* \* \*

13 I certify that the foregoing is a correct transcript from  
14 the record of proceedings in the above-entitled matter.

15 /s/Kathleen M. Fennell  
16 Kathleen M. Fennell  
Official Court Reporter

May 30, 2025  
Date

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